

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:07-CV-176-H

JERRY PARKER, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 )  
 SMITHFIELD PACKING COMPANY, INC., )  
 et al., )  
 )  
 Defendants. )

**MEMORANDUM AND  
RECOMMENDATION**

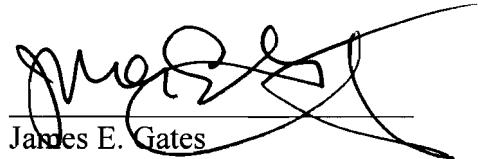
This case comes before the court on the consent motion (D.E. 266) of plaintiffs Jerry Parker, et al. (“plaintiffs”) and defendants Smithfield Packing Company, Inc. (“Smithfield”) and Premium Standard Farms, L.L.C. (collectively “defendants”) for summary judgment dismissing the claims of opt-in plaintiff Randall Hamby (“Hamby”) as time-barred. The motion is supported by the declaration of Terrie Westbrook (D.E. 266-1), a Human Resources Specialist at Smithfield.

The Fair Labor Standards Act provides plaintiffs with a maximum three-year statute of limitations to pursue a claim. 29 U.S.C. § 255(a). A claim is deemed to commence upon the date the plaintiff files his consent to opt in to the lawsuit. 29 U.S.C. § 256(b). Smithfield's records show that Hamby did not work at defendants' Clinton, North Carolina facility during the three-year period prior to the date his consent was filed. Plaintiffs' counsel concedes that there is no evidence that Hamby has timely claims and that his claims are subject to dismissal pursuant to Rule 56 of the Federal Rules of Civil Procedure. The court finds that no genuine issues of material fact are presented and that the relief sought should be allowed.

For the foregoing reasons, it is RECOMMENDED that the parties' consent motion for summary judgment dismissing Hamby's claims as time-barred be ALLOWED and this action be DISMISSED as to him.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have 14 days, or such other period as the court specifies, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

SO ORDERED, this 12th day of July 2010.



James E. Gates  
United States Magistrate Judge